IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 399 of 2005

UNION OF INDIA
V/S
SHANTI SWAROOP

Mr. VK MATHUR, for the appellant / petitioner

Date of Order : 7.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The learned Court below has set aside the award and remanded the matter back to the Arbitrator on account of the fact that counter claim filed by contractor was not adjudicated by the Arbitrator.

Assailing the impugned order, it is contended that the contractor had not taken any steps for appointment of Arbitrator, and when the department has appointed the Arbitrator, the counter claim was filed belatedly, which was barred by time, as on the date of filing the counter claim, and therefore, there was no occasion for the learned trial court to remand the matter to the Arbitrator again.

The learned counsel was pointedly put the proposition as to whether under the law, the Arbitrator is not required to adjudicate the counter claim where the defendant before Arbitrator had initially not taken any proceeding for appointment of Arbitrator, simply because, according to the claimant before the Arbitrator, the counter claim was barred by time.

Learned counsel could not substantiate the proposition in favour of, the Arbitrator being not required to adjudicate the counter claim, by any legal provisions, or judicial pronouncement. In my view, the question as to whether, counter claim is barred by time or is not sustainable on merits, are all question to be gone into by the

Arbitrator. Admittedly, the Arbitrator has not gone into the counter claim. I thus do not find any error in the order of learned trial cout in passing the impugned order remanding the matter back to the Arbitrator. The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/